

CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

May 4, 2011

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 5:35 p.m. in the City Council Conference Room on the 4th day of May, 2011, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Griffith, Kovach, and Chairman Dillingham

ABSENT: Councilmember Atkins

OTHERS PRESENT: Mr. Jeff Bryant, City Attorney
Ms. Susan Connors, Director of Planning and Community Development
Ms. Jayne Crumpley, Interested citizen
Ms. Brenda Hall, City Clerk
Ms. Leah Messner, Assistant City Attorney
Ms. Linda Price, Revitalization Manager
Ms. Syndi Runyon, Administrative Assistant IV

DISCUSSION REGARDING CLARIFYING CHAPTER 7.5, SECTION 7.5-22, OF THE CODE OF ORDINANCES OF THE CITY OF NORMAN RELATING TO MUNICIPAL CAMPAIGN CONTRIBUTION AND EXPENDITURE REPORTING.

Chairman Dillingham said the recent Council election cycle raised questions about when campaign statements and supplemental statements must be filed as well as questions about regulating issue only advocacy.

Ms. Leah Messner, Assistant City Attorney, said she and Kathryn Walker, Assistant City Attorney, had researched the issues and provided a written legal opinion to the Committee. She said the 10th Circuit Court of Appeals made a decision on a case on November 9, 2010, that dealt with campaign reporting. In October, City Council voted to amend portions of Chapter 7.5 of the Norman City Code regarding campaign filing. The City Attorney's Office was asked to review the case and determine whether the Court's decision had any implications on the recent Council enactment.

Ms. Messner discussed the case of Sampson v. Buescher in Colorado. She said Sampson was a group formed in Colorado to campaign against annexation and the group circulated a petition. The City Council declared the petition invalid because a sufficient number of residents had withdrawn their signatures from the petition. The group opposing the petition spent \$780 towards that effort. The proponent to the annexation learned that Colorado requires issue committees to register, which he did. The proponent then filed a complaint alleging that the opponent group failed to register and comply with reporting requirements related to contributions. The opponent group filed an action in the United States District Court alleging the Colorado law regulating ballot issue committees violated the First Amendment. The Court ultimately struck down Colorado's regulation that required registration of the Committee including identification of the contributors who contributed anything over \$20. The Court stated that issue committees function differently than candidate committees and it does not matter who supports the issue.

Ms. Messner said contrary to that, a new case from Maine, the National Organization for Marriage v. McKee, was also an issue election on whether or not to overturn Maine legislation that had allowed gay marriage. She said there was a lot more money involved in this election and a much bigger issue than local annexation as the National Organization for Marriage contributed \$1.9 million to support the ballot question, but did not register or file a campaign report; however, the Maine Court upheld their statutes because they had a higher reporting

threshold of \$5,000 in contributions before registration is required and disclosure of a contribution over \$100. She said even though the decision in National Organization for Marriage had a different result than Sampson, Sampson remains the controlling law in Oklahoma. She said although the same analysis of balancing of registration and disclosure with First Amendment speech and association rights was used on both cases Sampson's application to Norman's campaign finance ordinance still holds.

Chairman Dillingham asked if the Legal Department had found any examples of issues and candidate committees overlapping, i.e., a group or individuals were talking about being against the Porter Corridor, which was not on a ballot, but in speaking out against the Porter Corridor they used specific candidate images in their materials. Mr. Jeff Bryant, City Attorney, said he did not think Staff had found any cases directly related to that, but it all relates to protection of political speech, which commands the highest level of scrutiny by the Courts who will protect political speech every way they can. He said Courts have drawn the line between issue oriented versus candidate oriented and, except for the Maine case, Courts believe issue oriented regulation is pretty much hands off. He said candidate oriented issues have more leniency in the Courts as far as the ability of the Municipalities to regulate. Mr. Bryant said if the City has a committee that is formed to advocate an issue, but the advocating goes on during a campaign candidate cycle, he believes the Court will view that more as a candidate campaign as opposed to an issue campaign because it is in the election cycle. Chairman Dillingham agreed and said there was no issue on the ballot for that to be directed to.

Chairman Dillingham said, based upon the Sampson case, does the City need to do anything differently to its ordinance and Ms. Messner said the City's ordinance does not cover issue advocacy or issue based campaigns; however, State statutes do under the Political Subdivisions Ethics Act. She said Brenda Hall, City Clerk, is following that statute when candidates file their finance reports for issue campaigns or issue committees. She said because it is not a City ordinance, the Enforcement Authority is not reviewing those reports; however, Council could expand the Enforcement Authority's role and amend the ordinance to include oversight of issue committees.

Councilmember Kovach asked if the State statute reporting minimum is \$200 on issues instead of \$500 and Ms. Messner said yes. Councilmember Kovach said he was curious because the candidate minimum is \$500 and \$200 is the limit in the Colorado case. Mr. Bryant said the City does not regulate issue oriented advocacy, therefore it would be challenged at the State level by the Attorney General. He said the City can regulate if Council wants to expand the role of the Enforcement Authority.

Councilmember Kovach said that even though the Sampson case was based on an issue, one of the arguments presented was that you do not want to overburden the public's right to free speech by making it too onerous or difficult to participate. He questioned whether or not the City should have a minimal level, such as \$200, before an individual has to file a report. He said a person that decides to get involved in a campaign over the weekend after the Friday filing deadline and runs to the store to buy a poster board and marker to make a sign they hold up on a street corner is technically required to file a report and setting a minimum would alleviate that. Ms. Hall said, currently, any person or committee spending any amount of money must file. Councilmember Kovach suggested adding language that any committee formed after the deadlines would file a report within 24 hours or the next business day. Mr. Bryant said the purpose of the filing requirement on Friday by noon is to allow the newspapers time to print the information for public review prior to the Tuesday election and if someone forms a committee over the weekend, it is too late to get that information to the public anyway. Ms. Hall said, under the State Political Subdivision Act, an individual can spend as much money as they want in support of an issue and do not have to report anything; however, if a committee expends \$500 or more they are required to file with the State, while with the City, you must file if you have any contributions and/or expenditures. Councilmembers felt that mirroring the State statute minimums would be the fairest and most balanced solution.

Councilmember Kovach suggested allowing committees to fill out the forms online and send to the City Clerk electronically by the filing deadline then sign later and have the signature notarized. Ms. Hall said, technically, the reports are not valid until they have been notarized and the City has thought about online filing, but she did not know what costs would be incurred. She said it took the State years to get online filing mastered and they still deal with notary issues. Mr. Bryant asked if the State filing deadline was Friday or Monday before the election and Ms. Hall said State filing deadlines are earlier and the City requires filing on the Friday before the election to be able to provide the public with the most current information. She said if additional contributions and/or expenditures are collected over the weekend the candidate must file by noon on the Monday before the Tuesday election, but the newspapers have never printed the Monday reports. Mr. Bryant asked when the Monday filing was added and the Committee said 2008. Councilmember Kovach said Monday was specifically added because a candidate collected several thousand dollars in contributions over the weekend and it was not published. He said a candidate can plan to not disclose monies until the final report if filed after the election. Mr. Bryant said if someone really waits until the weekend before the Tuesday election to collect their money, he felt it would not make a difference to the election outcome and Councilmember Kovach agreed.

Ms. Hall said a threshold makes sense as last year, a committee that filed had spent only \$7, but this year, a committee formed over the weekend spent over \$500. Councilmember Kovach suggested excluding committees from the Monday filing requirement and Mr. Bryant said he did not think a committee forming on a weekend could affect the outcome of the campaign. Councilmember Kovach agreed and felt Monday filing could be burdensome on the candidates as well. Councilmember Kovach suggested removing the requirement for Monday filing and everyone agreed. Chairman Dillingham suggested establishing the State minimums and Ms. Hall said language should stipulate "Committee's supporting or opposing a candidate must file a report." Mr. Bryant asked if the Oversight Committee wanted to regulate issue committees and they felt they should be regulated by the State.

Mr. Bryant asked if Staff should bring a draft ordinance back to the Committee and Chairman Dillingham said to move it forward to a Council Conference.

Items submitted for the record

1. Memorandum dated April 27, 2011, from Leah Messner, Assistant City Attorney, through Jeff Bryant, City Attorney, to City Council Oversight Committee, Councilmember Atkins, Councilmember Dillingham, Councilmember Griffith, and Councilmember Kovach
2. Memorandum dated December 27, 2010, from Jeff H. Bryant, City Attorney, and Kathryn L. Walker, Assistant City Attorney, to Steve Lewis, City Manager

DISCUSSION REGARDING POLITICAL SIGN REGULATIONS.

Chairman Dillingham said there have been problems with campaign signs causing site problems when placed in residential front yards at intersections. Councilmember Kovach felt that a 4' by 8' sign placed in a yard during the 2010 election year was ridiculous and suggested 2' by 4' be the standard limited size for signs in residential areas. Mr. Bryant said City ordinances regulating free speech on private property is almost impossible to uphold. He said cities can regulate signs on rights-of-way, if it is a traffic or safety hazard, but not size of signs in neighborhoods unless they pose a safety hazard. Chairman Dillingham said she was only concerned about signs blocking traffic and/or pedestrian sight around corners. Mr. Bryant said the City can only regulate time, place, and manner. Councilmember Kovach asked how the City can regulate not placing a sign on a fence, which people do anyway. Mr. Bryant said it is still hard to enforce if the sign is on private property and although the ordinance states, "fence signs prohibited," it also states, "political signs allowable, not regulated." Mr. Bryant said if you have an obnoxious political sign on a fence on an arterial roadway, that could be considered a distraction to drivers, but felt even then it would be a stretch to prosecute.

Councilmember Griffith asked about aesthetics of the signs and Mr. Bryant said some political speech is designed to be aesthetically unpleasing to get attention. Councilmember Griffith asked if the City could regulate sign height in the right-of-way, such as maximum 3 feet to alleviate site problems, and Ms. Linda Price, Revitalization Manager, said signs are not allowed in the right-of-way except in a single family dwelling then it cannot be taller than 20 inches tall and 30 inches wide and that is the only exception to the right-of-way.

Councilmember Kovach asked how Staff judges the site triangle and Ms. Price said the rule is it supposed to be 30 feet each way from the property line to form a triangle. She said you can not do that easily if there is no sidewalk so, at the minimum, Staff measures from the curb line. He asked how tall a sign could be in the site triangle and Ms. Price said no signs are allowed in the site triangle. Councilmember Kovach asked if information is distributed to candidates regarding measuring the site triangle and Ms. Hall said no, candidates do receive information on political sign regulations and that could be added. Chairman Dillingham suggested a drawing as a visual aid and Ms. Price said the site triangle in rights-of-way vary from location to locations so they usually tell candidates to contact the Planning Department who would be happy to supply examples.

Councilmember Kovach asked if Staff is proactive in regulating political signs and Ms. Price said any sign in the right-of-way is proactively removed unless the sign is from a group, such as the United Way, that has a Limited License approved by City Council allowing them to place signs in the right-of-way for a limited time.

Ms. Hall said the Enforcement Authority stresses sign regulations during the candidate's orientation process, but candidates use volunteers to help place signs who are not informed of the regulations so they place signs anywhere.

Chairman Dillingham said all the City can do is explain the regulations and ask everyone to play nice.

Ms. Susan Connors, Director of Planning and Community Development, said the current ordinance is confusing as it reads that fence signs are prohibited, but political signs are allowed and asked if Council wanted clarify the language. Mr. Bryant suggested, "prohibited, unless they are political signs" and Chairman Dillingham added, "as regulated herein." Councilmember Kovach asked if that included issues as well as candidates and Mr. Bryant said yes.

Items submitted for the record

1. Memorandum dated April 28, 2011, from Linda R. Price, Revitalization Manager, to Honorable Mayor and Councilmembers
2. Excerpts from the City of Norman Sign Regulations
3. Political Sign Regulations

MISCELLANEOUS DISCUSSION.

Chairman Dillingham said the Committee will discuss special events at their June meeting. Chairman Dillingham said she did not want the Special Events Ordinance to be about the Music Festival and that is what happened in the March meeting. Chairman Dillingham said future subjects will include Saturday parking meter issues, Charter Review Committee ordinance, water conservation, and big construction trucks traveling small streets such as Elm and College. She said the trucks are tearing trees up as they drive through.

The meeting adjourned at 6:32 p.m.